



September 7, 2001

Mr. Wiley B. McAfee  
Police Legal Advisor  
City of Irving - Police Department  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2001-3978

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151660.

The City of Irving Police Department (the "department") received three requests for information on three named officers. In particular, the requestor seeks (1) any letters, memoranda or documents relating to the incomes, performance evaluations, complaints filed, and investigations conducted against the named officers; (2) any information of the arrests made by the officers since their employment with the department including the names of the persons arrested, types of arrests, dates of arrests, and dispositions of the cases; and (3) all transfer requests of the officers since the date of their hire with all supervisor comments and any action taken or not taken along with the written notes. You inform us that you have referred the requestor to the Civil Service Director for the City of Irving (the "city") pursuant to section 143.089(g) of the Local Government Code. You claim that the submitted motor vehicle accident investigations are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You explain that the remainder of the requested information either does not exist or has been made available to the requestor. We have considered the exception you claim and reviewed the submitted information, marked as Exhibits E, F, and G.

We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses

information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files: one that the police department is required to maintain as part of the officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App. - Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.-- San Antonio 2000, no pet.) (information reasonably relating to officer's employment relationship with department and maintained in the department's internal file pursuant to section 143.089(g) is confidential). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to that investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records contained in the (a) file are not confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 2 (1990).<sup>1</sup>

You assert Exhibits E, F, and G contain personnel information maintained by the department as authorized under section 143.089(g) of the Local Government Code, and that none of the withheld investigations resulted in disciplinary actions as defined under chapter 143. *See* Local Gov't Code §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). Having reviewed the submitted information, we conclude that Exhibits E, F, and G

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<sup>1</sup> Ordinarily, information maintained in a police officer's civil service personnel file must be released to the public upon request, unless some other provision of chapter 552 of the Government Code permits the civil service to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).

are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DBF/seg

Ref.: ID# 151660

Enc: Submitted documents

c: Mr. Mario Gamez  
P.O. Box 190627  
Dallas, Texas 75219  
(w/o enclosures)